84-869

No. 84- _____

Office - Supreme Court, U.S.
FILED
NOV 28 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HOUFF TRANSFER, INC.,
Petitioner,

and

NATIONAL LABOR RELATIONS BOARD; AMERICAN TRUCKING ASSOCIATIONS, INC.; TIDEWATER MOTOR TRUCK ASSOCIATION; INTERNATIONAL ASSOCIATION OF NVOCCs; AMERICAN WAREHOUSMEN'S ASSOCIATION; AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO; NEW YORK SHIPPING ASSOCIATION, INC.; AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

WILLIAM L. AUTEN
Blakeney, Alexander & Machen
3700 NCNB Plaza
Charlotte, N.C. 28280
(704) 372-3680

Attorney for Houff Transfer, Inc.

QUESTION PRESENTED

Having acknowledged the fact that certain of the longshoremen's traditional cargo-handling work has been rendered "unnecessary" -- could the Circuit Court Opinion then properly conclude that the ILA had a lawful work-preservation purpose in enforcing a claim to separate cargo-handling work that previously, both before and after "containerization", had **always** been performed **by motor-carrier employees after the longshoremen had completed their now eliminated, "unnecessary" work?**

PARTIES BELOW

In addition to the parties set forth in the caption of this Petition, parties listed at page I. of the Petition in No. 84-696 were named in these consolidated cases.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES BELOW.	i
OPINIONS BELOW	2
JURISDICTION	3
STATUTES INVOLVED	3
REASONS FOR GRANTING THE WRIT	5
The ILA Could Not Have Had a Lawful Work-Preservation Purpose in Enforcing a Claim to Cargo-Handling Work That Previously, Both Before and After "Containerization", Had **Always** Been Performed by Motor-Carrier Employees **After** the Longshoremen Had Completed Their Now Eliminated, "Unnecessary" Work	5
CONCLUSION	17

STATUTES

28 U.S.C. §1254(1)	3
National Labor Relations Act, 29 U.S.C. §151 **et seq.**, §§158(b), 158(b)(4)(B), 158(e)	3-5

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

No. ____

HOUFF TRANSFER, INC.,

Petitioner,

and

NATIONAL LABOR RELATIONS BOARD; AMERICAN TRUCKING ASSOCIATIONS, INC.; TIDEWATER MOTOR TRUCK ASSOCIATION; INTERNATIONAL ASSOCIATION OF NVOCCs; AMERICAN WAREHOUSEMEN'S ASSOCIATION; and INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO; NEW YORK SHIPPING ASSOCIATION, INC.; and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner respectfully prays the Court for a Writ of Certiorari directed to the United States Court of Appeals for the Fourth Circuit, to the end that this Court may review a decision which that Court has rendered in a case involving the parties above-named, and the Petitioner respectfully shows to the Court:

OPINIONS BELOW

The Opinion of the Court of Appeals is reported at 734 F. 2d 966 and may be found in the Joint Appendix previously filed by other petitioners in this Court at 1-34.[1] The Decision and Order of the National Labor Relations Board in **International Longshoremen's Ass'n. (Dolphin Forwarding, Inc.), (Dolphin II)** is reported at 266 NLRB 230

---

[1]The various petitioners in Nos. 84-677, 684, 691 and 696 joined in the preparation of said Joint Appendix.

(1983) and may also be found in said Joint Appendix at 35-64.

JURISDICTION

The Judgment of the Court of Appeals was entered on May 9, 1984. Petitions for Rehearing and Suggestions for Rehearing En Banc, timely filed by Houff Transfer, Inc. and other parties, were denied by the Court of Appeals on July 31, 1984 (Jt. App. at 31-34). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act (29 U.S.C. §151 **et seq.**) (NLRA) are as follows:

Section 8(b), 29 U.S.C. §158(b), provides in pertinent part:

It shall be an unfair labor practice for a labor organization or its agents --

4(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is:

* * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person ... **Provided**, That nothing contained in this clause (B) shall be construed to make unlawful ... any primary strike, or primary picketing;...

Section 8(e), 29 U.S.C. §158(e), provides in pertinent part:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such

an agreement shall be to such extent unenforceable and void....

REASONS FOR GRANTING THE WRIT

The ILA Could Not Have Had a Lawful Work-Preservation Purpose in Enforcing a Claim to Cargo-Handling Work That Previously, Both Before and After "Containerization", Had Always Been Performed by Motor-Carrier Employees After the Longshoremen Had Completed Their Now Eliminated, "Unnecessary" Work

In these consolidated cases, the ultimate issue addressed by the National Labor Relations Board was whether and to what extent Rules on Containers promulgated by the ILA and Shipping Associations, but having an impact upon other employers and their employees, legitimately sought to preserve to ILA laborers certain cargo-handling work they traditionally and historically had performed. In the **Associated Transport** cases, in which Houff Transfer, Inc. was a charging party, the Board ruled that, in pertinent part, the Rules sought to acquire certain

cargo-handling work traditionally and historically performed by employees of motor carriers and **never** performed by ILA laborers. The Circuit Court Opinion, however, refused to enforce this **Associated Transport** ruling.

Counsel for Houff Transfer respectfully submits that the statements of the case set forth in previously-filed, related petitions addressed to this Court[2] sufficiently describe the procedural history of, and the substantive rulings in, these consolidated cases. It is also suggested that the pertinent authorities have been cited and argued in the previously-filed, related petitions.

It is the purpose of Houff's Petition to invite this Court's attention to certain indisputable facts that Houff believes to

---

[2]Nos. 84-677, 684, 691 and 696.

be most pertinent and to argue that the Court of Appeals has drawn logically incorrect and legally impermissible inferences from such facts.

It should be understood that Houff Transfer seeks review only to the extent that the Circuit Court refused to enforce those portions of the Board Decision and Order concluding, in the **Associated Transport** cases, that the ILA and Shipping Association parties had committed the alleged unfair labor practices. As mentioned above, Houff was one of the prevailing charging parties in those cases and intervened in the Court of Appeals as a party respondent with the Board. Although other parties to these consolidated cases may file meritorious petitions for certiorari, Houff earnestly and respectfully contends that the most compelling reasons for reviewing the Circuit Court Opinion are to be found in its refusal

to enforce the Board's **Associated Transport** rulings against the ILA and Shipping Association parties.

ILA laborers traditionally handled ocean-going cargo only at the piers, moving and placing packages, cartons, crates, boxes and other containers, of various sizes and descriptions, on and off ships.

About twenty-five years ago, the owners of ocean-going vessels began to develop their use of significantly larger containers, usually between twenty and forty feet in length. Cargo was loaded or "stuffed" into these larger "trailer-containers", which could be loaded on and off ships without loading and unloading the individual cargo items. As the handling of "containerized" cargo continued to develop, ships were fitted for carrying large numbers of trailer-containers which were loaded on and off ships by cranes. These containers

were designed so that they could be hooked onto a power unit for motor-carrier transportation in the ordinary tractor-trailer configuration.

Prior to the shipping companies' utilization of "trailer-containers", and prior to the advent of "containerization" in the maritime industry, motor-carrier employees picked up import cargo at the piers with local equipment. Motor-carrier freight handlers then reloaded the cargo, with other freight, onto motor-carrier equipment in preparation for over-the-road transportation. In the case of export cargo, motor-carrier employees transported such cargo and other freight to the trucking terminal in the port city, for reloading into local equipment in which the ocean-going cargo would be taken to the piers.

The handling of "shipper's load" cargo -- that is, cargo consisting of a single

shipper's goods, housed in a large "trailer-container" for transportation by sea and land to a single recipient -- has been performed by motor-carrier employees in connection with over-the-road transportation of the cargo. The "FSL" container became the "**local**" trailer or was used instead of the "**local**" truck.

The cargo-handling work at the trucking terminal always has been and remains necessary in the conduct of surface-transportation operations. This work always has been performed by motor-carrier employees in the ordinary course of their daily duties, both before and after "containerization", and **never** has been performed by longshoremen. "Containerization" did not eliminate the previously-existing necessity that import and export cargoes frequently be reloaded at port-city trucking terminals in the usual and ordinary conduct of surface-

transportation operations. "Trailer-containers" were interchanged in the surface transportation industry prior to "containerization" in the maritime industry, and motor carriers always have unloaded and reloaded freight housed in their own containers and in other owners' containers. The facts could not support any conclusion, and the Court of Appeals has not concluded, that "containerization" in the maritime industry created any new work of reloading cargo in connection with its over-the-road transportation or that any of the longshoremen's former work was displaced. Exactly to the contrary, the Circuit Court Opinion specifies that the longshoremen's former work was eliminated.

Indeed, the Opinion below does not repudiate any of the foregoing facts. In fact, the Court below summarized these facts as follows:

> "Prior to containerization, both the longshoremen and the truckers handled the break-bulk cargo as it moved from the ship to the consignee. Longshoremen would perform the initial unloading of the ship, moving the cargo piece by piece to the local seaport terminal. From there, truckers usually hauled the cargo to their own terminal or freight station, where they would reload it into their over-the-road equipment. With containerization, the off-pier work of the short-stopping[3] truckers remains essentially unchanged except that they unload cargo from containers instead of from motor trucks. **And with containerization, of course, the work formerly performed by the longshoremen has been rendered unnecessary because the container can be fastened to the chassis of a truck and transported intact to the trucking terminal or freight station.**" [Emphasis added.] (Jt. App. at 27).

Upon all of the foregoing facts, however, the Opinion below concluded:

---

[3]"Shortstopping" is a term that has never been employed in the surface-transportation industry. It is a "label" applied by the ILA and the Shipping Associations to motor carriers' local freight reloading operations that always have been performed both prior and subsequent to the utilization of containers in the maritime industry.

> "From these unassailable facts, the Board concluded that the ILA's attempt to preserve under the Rules loading and unloading of cargo constitutes 'unlawful work acquisition'. But the Board conspicuously failed to ground this conclusion of law in **the only finding of fact** that might support it: that the Rules, in preserving for ILA members the right to do this initial loading and unloading, somehow deprive the truckers and warehousemen of **their** [emphasis in original] off-pier work by transferring all or some of it to longshoremen at the pier. . . . [O]ne cannot possibly maintain that the stripping of import containers at the pier would in any way prevent the identical off-pier work." [Emphasis added.] (Jt. App. at 27-28).

It is respectfully submitted that additional incontrovertible facts of record set forth below fully supported the Board's conclusions in the **Associated Transport** cases. These facts were, as demonstrated by the above-quoted portions of the Opinion below, unheeded by the Circuit Court.

The indisputable facts are that the Rules on Containers never have stated that full shipper's load containers are to be

unloaded by ILA laborers at the piers; what certain Rules changes in 1974 did specify was that such container loads could initially be handled within fifty miles of the piers only by ILA laborers; that is, if motor carriers elected for their own operational reasons to reload such freight at their trucking terminals, as they always had done, such freight-handling was specified to be a Rules violation. Stated another way, the Rules purported to say that only ILA laborers could engage in the initial cargo-handling in the port area, regardless of whether the cargo-handling was related to pier operations or to surface-transportation operations.

The Rules' claim (after 1974) was that ILA laborers were entitled to accomplish the work of unloading and reloading full shipper's load containers only if and when the motor carrier, for its own reasons, elected

for the cargo to be transferred to its trailer. If a motor carrier elected, for its own reasons, to have the container cargo reloaded onto its trailer, and such reloading were to be done by ILA laborers at the pier, it would seldom be necessary (and would be economic folly, if avoidable) to again reload the freight onto yet another motor-carrier trailer at the trucking terminal. Thus, if the Rules provisions in question were to be enforced, the vast majority of reloading would be done at the piers, would not be done at the trucking terminals, and the motor-carrier freight-handlers' work would be taken from them, even though the work was necessary or convenient, and traditionally had been performed before "containerization", because of surface-transportation operational considerations.

The 1974 Rules changes have not continuously deprived motor-carrier freight

handlers of their traditional work only because such Rules changes have either been enjoined or unenforced during most of the years since their promulgation. It would be one thing for the ILA to claim the right to unload all full shipper's load containers at the piers; reloading at trucking terminals, in such event, would continue to be necessary and desirable in similar circumstances to those which dictated such reloading prior to "containerization" in the maritime industry. But the Rules' claim, in effect, is that ILA laborers shall perform not the pier work formerly performed by longshoremen but the surface-transportation work formerly performed by motor-carrier employees. These incontrovertible factual circumstances unassailably support the Board's "unlawful work acquisition"

conclusion, and the Court of Appeals should have enforced that Board ruling.

CONCLUSION

Upon all of the foregoing, the Petitioner earnestly prays the Court for a Writ of Certiorari, directed to the United States Court of Appeals for the Fourth Circuit, to the end that this Court may review the Circuit Court's refusal to enforce the Board's rulings in the **Associated Transport** cases.

Respectfully submitted,

William L. Auten
Attorney for the Petitioner